

89-1808

Supreme Court, U.S.  
FILED

MAY 21 1989

JOSEPH F. SPANGLER JR.  
CLERK

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1989

JAMES WILSON, Petitioner

v.

SECURITY INSURANCE CO., Respondent

On Writ of Certiorari to the  
Supreme Court of the State of Connecticut  
(Docket 13618)

Petition for Writ of Certiorari

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## Questions Presented

After Arbitration Award rendered for petitioner for recovery of policy benefits, respondent filed application to vacate award in Superior Court, Connecticut without grounds, but at trial offered no evidence as to the content of the proceedings below, and objected to such evidence offered by Wilson. The trial court confirmed the award on a de novo review. On appeal, the Supreme Court of Connecticut reversed, with factual findings, denying benefits.

The issues are: did the Supreme Court of Connecticut cause petitioner to be deprived of due process of law:

a) by rendering a factual finding without evidence of the proceeding in arbitration below?

b) by not ruling on federal due process claims presented re: respondents in-



itial failure allege grounds and subsequent failure to perfect record.

## Lists and Tables

### Parties to the proceeding:

Petitioner: James Wilson of Fairground  
Road, Woodbridge, Connecticut.

Respondent: Security Insurance Company,  
Hartford, Connecticut.

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Reference to Opinions below:

A. Decision of Supreme Court of Connecticut, 213 Conn. 532, \_\_\_\_ A2d \_\_\_\_ Appendix p. 1.

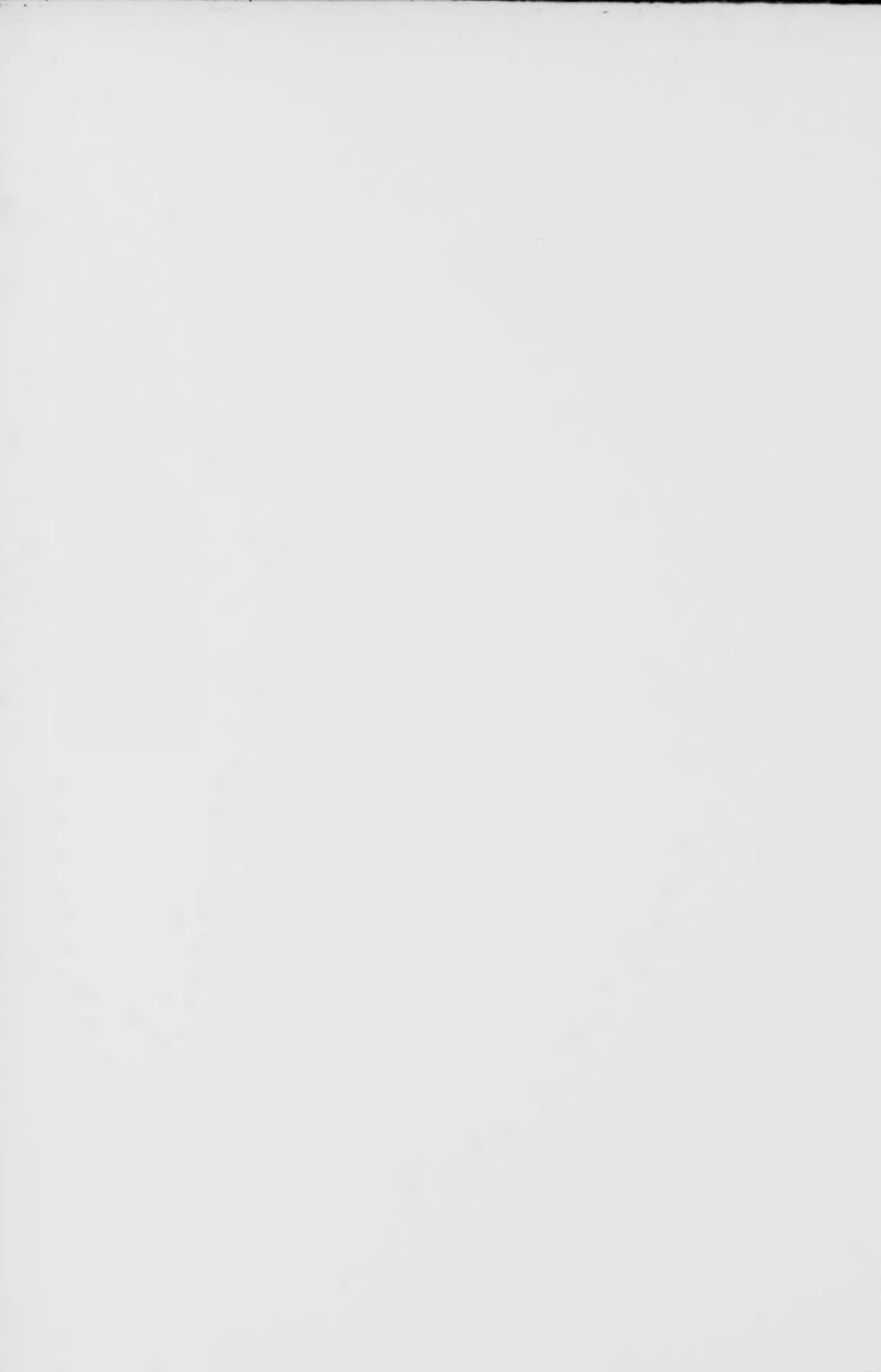
B. Decision upon motion for reargument, denial without opinion. Appendix p. 40

C. Opinion of Arbitration Panel. Appendix p.25,

D. Dissenting opinion of Arbitrator Appendix p.29

E. Memorandum of Superior Court sustaining award, Appendix p.9,

Jurisdictional Statement.



Grounds: Petitioner's rights to due process of law in arbitration proceeding violated by a review process in which the evidential record is withheld from the Appellate de novo review process over objections duly made and preserved, followed by Appellate factual finding in said review process.

i. Date of Judgment or decree sought to be reviewed: Decision of Supreme Court: January 30, 1990.

ii. Date of order respecting a rehearing: February 21, 1990

iii. Statutory provision believed to confer jurisdiction in this court to review the judgment or decree by Writ of Certiorari, 28 USC §1257(a)

G. Constitutional Provisions.

Amendments to Constitution of the United States.



## ARTICLE V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

## ARTICLE XIV

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State



wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."



#### H. Concise Statement of Case

Wilson, a police officer, sustained serious personal injury while on duty when struck by an uninsured motor vehicle. The Security Insurance Co. had issued an Automobile Insurance policy to the "Town of Woodbridge, et al" with uninsured and underinsured motorist coverage as mandated by C.G.S. 38-175c. Unable to agree as to the amount payable, Wilson made demand for arbitration under the provisions in the policy. Refusal to arbitrate led to the first appeal to the Supreme Court which decided that respondent was required to submit to arbitration, that coverage issues must be presented to arbitration by statute. Additionally in dicta the court announced that the insurance company was entitled to "review de novo" after the decision on coverage by the arbitration panel.



Wilson v. Security, 199 Conn. 618,  
509 A2d 467.

The parties proceeded to arbitration. After hearing the majority made a finding and award on July 25, 1988, for Wilson. Appendix p.25. One arbitrator dissented, on grounds that did not include a stacking issue. Appendix p. 29

Security Insurance Co. filed an application to vacate the award on August 18, 1988 alleging the arbitrators violated state law without setting forth in the application its grounds, praying remand to arbitration for an order "in conformity with the opinion of dissenting arbitration. Appendix p 37. The application attached the policy and the Award and the Dissenting Opinion. No transcript or other record of the evidentiary proceedings in arbitration were filed. Wilson moved to dismiss for failure to state



grounds alleging violation of his rights to due process under the Federal Constitution. Appendix p. 103. With his motion, Wilson filed Request to Admit which was objected to on basis rehearing is not authorized and the statutory procedures did not authorize Request to Admit. Objections to Request to Admit were sustained. Motion to Dismiss was denied. Amendment to Petition filed Sept. 12, 1988 alleging error in permitting the stacking of coverage.

At hearing Sept. 19, 1989 before the Superior Court, Security Insurance Co. proceeded claiming that the only support needed were the policy and decisions of the arbitrators, that evidence heard by the arbitrators was irrelevant. Appendix p. 68-70, 74. Wilson claimed the evidential record before the arbitrators was necessary. Appendix 71-72, 74. The



trial court ruled that the burden of presenting the evidential record was upon Security Insurance Co. Appendix 71, 73 Wilson offered to present evidence as to the content of the hearing before the arbitrators Appendix 76, 79. The trial court rejected the offer. Appendix 77. Wilson claimed his right to have the court hear the nature of the evidence before the arbitrators was protected by the Fifth and Fourteenth Amendments to the United States Constitution, Appendix p.76, and this right prevented the Security from succeeding without the evidential record. Appendix 76.

The Superior Court on December 8, 1988 found for Wilson on the Motion to Vacate. Appendix p.9, Record p 66. In its memorandum, the Trial Court noted: "The Security Insurance Co. offered no record to this Court that the findings of the arbi-



trators was not supported by the evidence." [Appendix p.22, Record p. 78, p. 13 of Memorandum.] On this basis the trial court found for Wilson.

The Security Insurance Company appealed, and included an assignment of error that the decision of the trial court erred in upholding the award insofar as it permitted stacking of coverages.

Wilson preserved the federal claim by his Preliminary Counter-Statement of Issues on Appeal, claiming Security had abandoned or waived the right to review by not presenting to the record evidence of the matters heard by the arbitrators and that such failure violated petition's due process rights under the United States Constitution. Appendix p.98, et seq, 102, with a cross appeal from the failure to dismiss the petition



for failure to state grounds. Counter Statement paragraphs 1, 2, 3, 6, 7, 8, 11, 13, 14 and 15. Appendix p. 98-102.

In Wilson's Brief to the Supreme Court of Connecticut, the court was informed that the provisions of the due process clauses of the Fifth and Fourteenth Amendments to the Constitution were and had been relied upon in the trial court. Wilson's Brief, Appendix 41-42. The failure of Security to present the record before the arbitrators and its objection to Wilson supplying evidence of the proceedings before the arbitrators was argued as a denial of due process of law under the United States Constitution Wilson's Brief, Appendix p. 42-43, 50-55. The argument followed Wilson's claim that Security had failed to meet its burden of proof in the trial court by not showing the record before the arbitration panel.



Appendix p. 50. Wilson's brief claimed the rejection of Wilson's offer of proof would make review impossible and that it was Security's duty to have presented a sufficient case to the trial court. Due process under Federal Constitution was asserted. Appendix p. 53.

Wilson's brief (Appendix p. 58) claimed the failure of the Petition to set forth grounds was an alternate ground for sustaining the dismissal of the Application to Vacate the Award, and upon due process grounds alleged in the motion with specific reference to the federal constitution.

In its decision January 30, 1990 the Supreme Court reversed the decision of the trial court and passed upon the factual expectations of the parties to the contract of insurance. Appellate proceeding did not permit the taking of evidence for findings of fact.



The Supreme Court of Connecticut, focusing on a single item of the documents filed by the insurance company found that reasonable expectations of the parties could be found and without referring in the decision to the failure to produce evidence as to the record before the arbitrators nor to the constitutional claims made by Wilson as to due process of law. The federal questions were not passed on by the Supreme Court of Connecticut in its opinion.

On February 8, 1990, petitioner Wilson filed a Motion for reargument and reconsideration and presented as the primary grounds stated as follows: "Did the decision violate James Wilson's rights under the Contract Clause and to due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Sec. 10



of the Constitution of Connecticut by A) failing to decide issues presented on appeal, B) by failure to conduct review de novo based upon the full record of proceedings in arbitration over objection, C) by rendering decision without rational basis, and D) by assumption of the fact-finding powers of the arbitrators."

Motion to Reargue denied February 21, 1990 without opinion.

In 1972, the Connecticut Supreme Court had held that the Minimum Regulations of the State of Connecticut governing uninsured motorist coverage, Regulation 38-175a-6 did not authorize the inclusion in insurance policies of "other insurance" provisions to limit or exclude coverage. Pecker v Aetna Casualty and Surety Co., 171 Conn. 443, 370 A2d 1006. The attempt to include a provision



not authorized by regulation was void. The insurance policy involved in Pecker was re-construed without reference to the void proviso. In 1975 the Connecticut Supreme Court held that a single policy issued to cover more than one vehicle with separate listings of vehicles, separate premium charges for each vehicle and separate coverages for each vehicle required separate stackable coverages for persons insured in respect to each vehicle so insured. Safeco v. Vetre, 174 Conn. 329, 387 A2d 539. The Connecticut Statute, C.G.S. §38-175c requires that persons covered for liability insurance be covered for uninsured motorist coverage. The insurance policy provided its insureds were provided liability coverage for all vehicles. In the year 1986 in Nationwide v. Gode, 187 Conn. 386, 446 A2d 1059, the



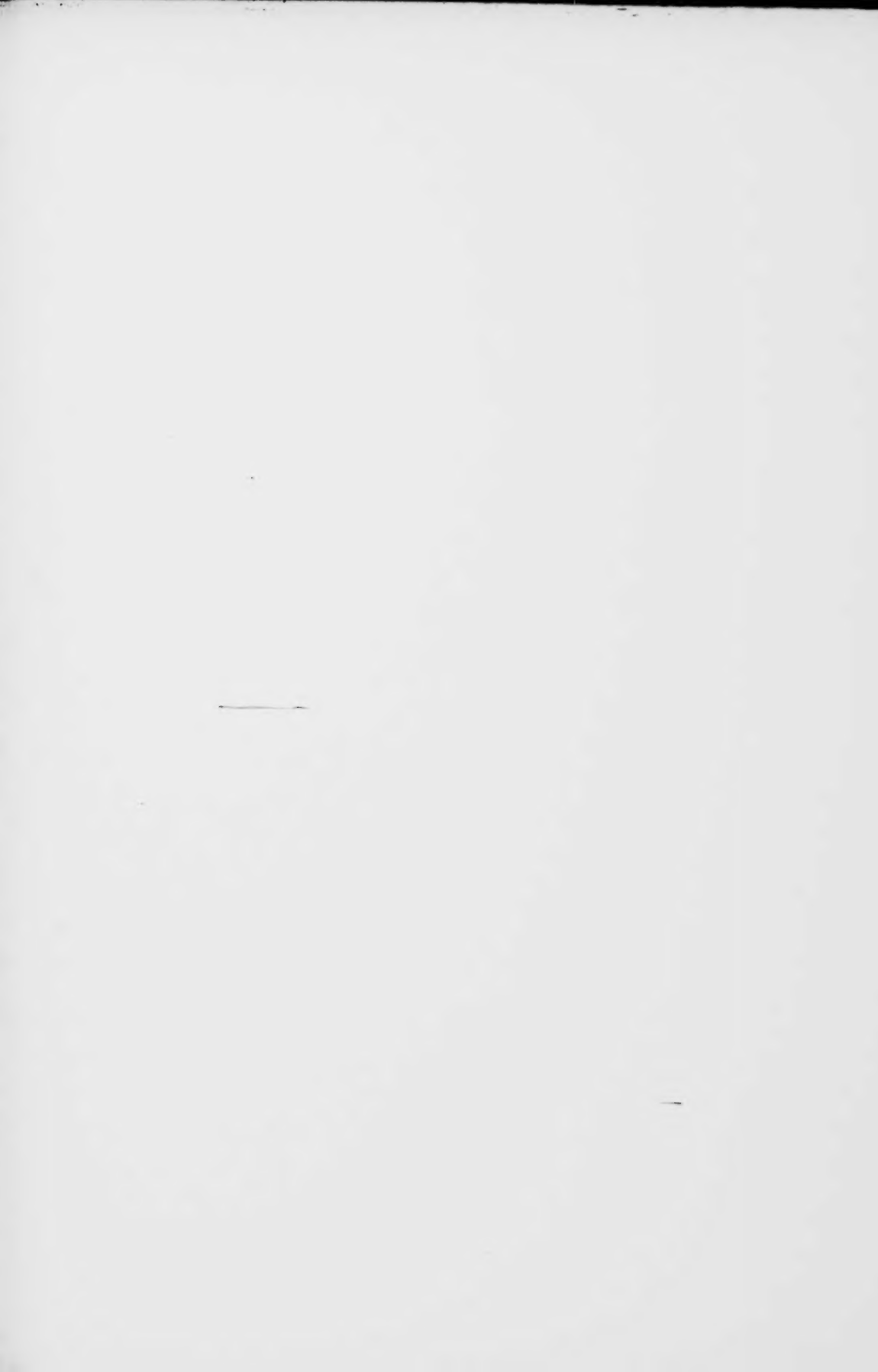
Supreme Court of Connecticut followed the decisions of Pecker and Safeco after legislative amendments of 1979. In Nationwide, the court indicated that it would look to the intention of the parties to the contract and reviewed the contract language to determine the intent of the parties. The dissenting opinion noted that arguments directed toward the intent of the parties would require review of the actuarial expectations based upon premium receipts and the profit and loss ratios. In a footnote to Nationwide decision the Supreme Court reserved decision as to the effect upon policies issued for fleet coverage.

The policy issued by Security Insurance Co. was issued to "The Town of Woodbridge, et al". The form of the policy was similar if not identical to the family automobile policy, defining the term



"who is insured" as "1. You or any family member". The uninsured motorist coverage defined the term family member and contained other provisions that tracked the types of policies used for coverage in Pecker and Safeco.

Wilson's argument is that the Connecticut legislature vested the fact finding powers with the arbitrators who had the original jurisdiction to take evidence as to the intentions of the parties including opportunities for presentation of evidence regarding negotiations and/or the underwriting expectations of the insurance company based upon and measured by calculations actually used to set premiums along with advice to underwriting departments from legal advisors. The insurance company in selecting a form of policy identical to and structured in the same manner as family automobile policy



could and should have structured its premiums according to the expectations derived from Pecker and Safeco, or produced evidence sufficient to convince the arbitrators otherwise. No arbitrator found for the insurance company on the stacking issue based upon the record before them. The insurance carrier did not assert the stacking issue within the 30 days time period for filing application to vacate an award.

The Petition for Certiorari ought to be granted for the purpose of further developing the law pertaining to judicial review of arbitration awards. Prior to the first decision in the instant litigation (Wilson v. Security Insurance Co., 199 Conn. 618, 509 A2d 467) the law of the State of Connecticut had held that arbitration awards were final and binding and said law resulted from unrestricted



submission to arbitration. In Wilson v. Security Ins. Co. 199 Conn.618, 509 A2d 467, the Supreme Court of Connecticut found that as a result of a statute conditionally mandating the submission of coverage issues to arbitration (i.e. if the insurance company included an arbitration clause in its policy) that arbitration was compulsory and review de novo would be granted as to both legal and factual findings. American Universal Ins. Co. v. DelGreco, 205 Conn. 178, 530 A2d 171.

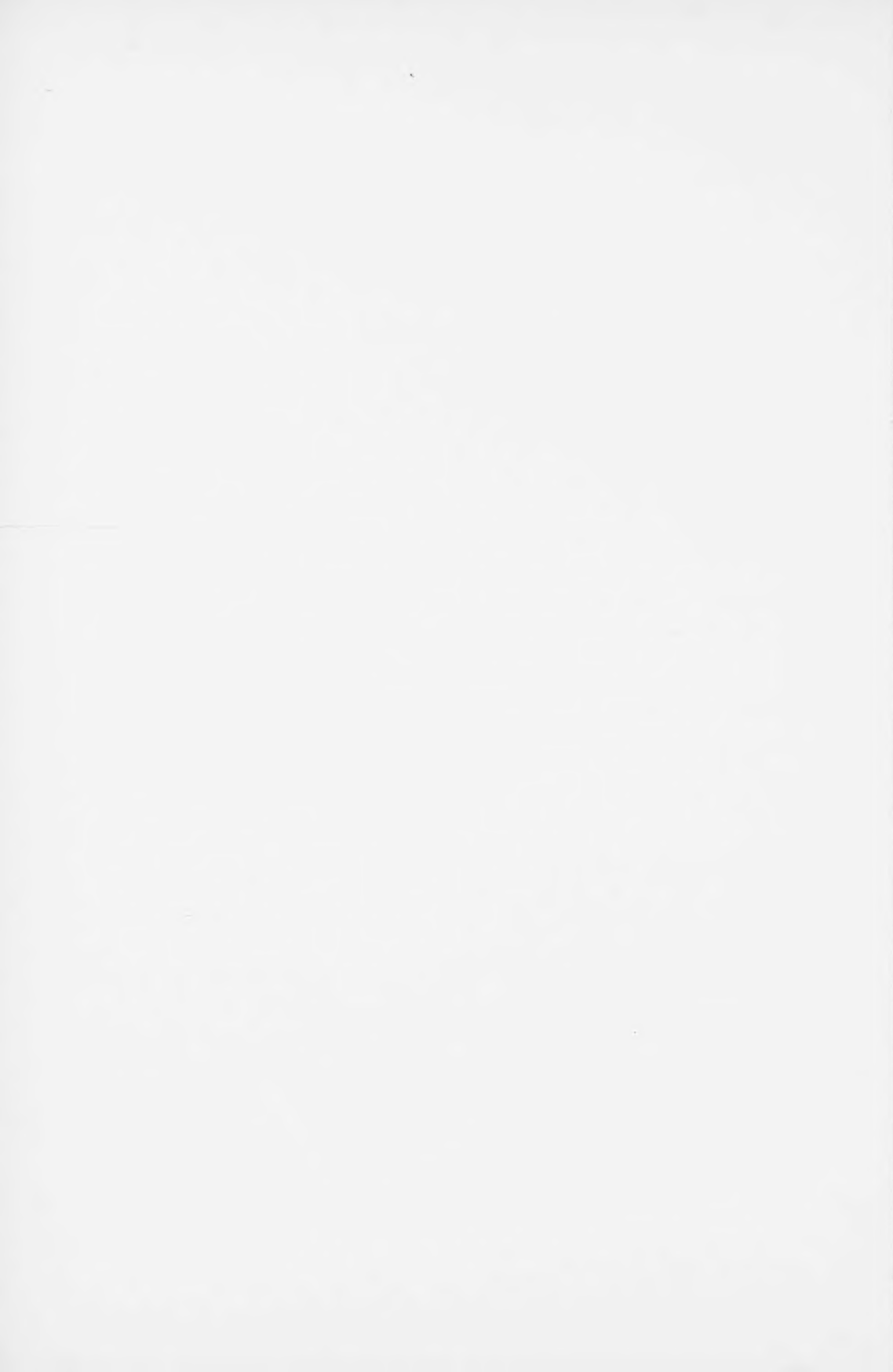
Wilson urges the granting of certification for the purpose of preserving rights established upon a full evidential hearing. The conclusions as to the "reasonable expectations of the parties" as stated by the Connecticut Supreme Court are reached after examination of that evidence selected solely by the Insurance



Company for presentation, i.e.: the premium charges of a single insurance policy. Consequently the Court acted without knowledge of full evidence presented in fact-finding sessions conducted in the arbitration and without knowledge of the insurance company waiving rights in arbitration by failing to produce actuarial experts. Secondino v. New Haven Gas Co., 147 Conn. 672, 165 A2d 598.

Failure to produce evidence permits an inference evidence not produced is unfavorable. Wilson has been deprived of the right to be heard in meaningful manner as to whether the premium charge was in fact intended to cover the risk, and was reasonable or whether the insurance company had waived its rights to be heard in said matter in a lower tribunal.

The Connecticut Supreme Court has no fact-finding authority. Styles v



Tyler 64 Conn 432, 30 A 165, and does not sit as a super and legislature.

Blue Sky Bar, Inc. v Stratford 203

Conn 14, 27, 523 A2d 467, New

Orleans v Dukes 427 U.S. 297, 96 S Ct 2513 49 L Ed. 2d 511.

Usually the Connecticut courts recognize that notice of issues is necessary for the purpose of due process. It has been held in Connecticut that the purpose of pleadings is to give notice of issues.

Board of Education, Norwalk, v

Commission on Human Rights & Opportunities, 177 Conn. 75, 411 A2d 40;

Biller v Harris, 147 Conn. 351 at

355-8, 161 A2d 187; Farrell v St.

Vincent's Hospital, 203 Conn. 554, 557,

525 A2d 954; Frances v Hollauer,

1 Conn. App. 693, 694-5, 475 A2d 326.

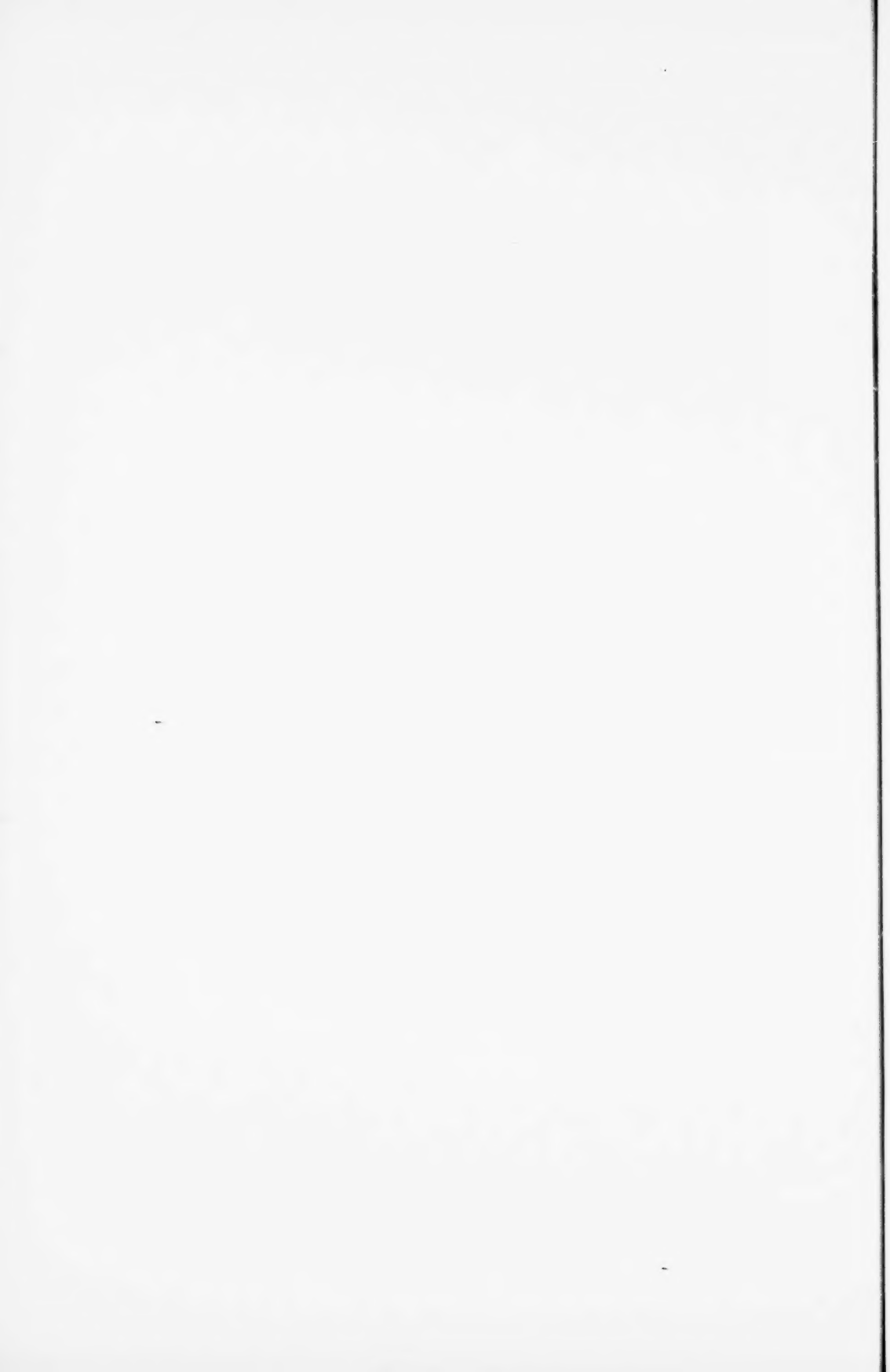
The plaintiff did not in the application to vacate award assign the errors



complained of and claims not assigned are  
- waived and abandoned. Connecticut usu-  
ally disapproves. Board of Police  
Commissioners v White, 171 Conn. 553 at  
556-7, 370 A2d 1070

The burden of designating the issues is  
upon the plaintiff who must plead and  
prove the alleged cause of its grievance.  
5 Am.Jur.2d 656, Arbitration and  
Award \$186.

In the constitutional sense, due proc-  
ess of law requires notice sufficient to  
permit preparation. Specific issues must  
be identified. In Re Gault, 387  
U.S. 1, 18 L.Ed. 2d 527 at 549-550,  
Armstrong v Manzo (1965), 380 U.S.  
545, 14 L.Ed. 2d 62, 85 S.Ct. 1187,  
Osterlund v State, 129 Conn. 591  
(Syllabus ¶5), 596, 30 A2d 393. It is a  
fundamental premise of due process that a  
court cannot adjudicate a matter until



the persons directly concerned have been notified of its pendency and have been given a reasonable opportunity to be heard in sufficient time to prepare their positions on the issues involved .

Costello v Costello, 186 Conn. 773 at 776-7, 443 A2d 1282; Winick v Winick, 153 Conn. 294, at 297-299, 216 A2d 185.

No grounds for vacating the award pertaining to stacking appear in the application to vacate. Grounds not set forth are abandoned. Trumbull v. Trumbull Police Local 1745, 1 Conn. App. 207, 216, 470 A2d 1219; Maloney v Taplin, 154 Conn. 247, 224 A2d 731; (holding written appeal limits scope of appeal, fatal omission cannot be corrected), Cottrell v Conn. Bank & Tr. Co., 168 Conn. 119, 398 A2d 309; Lewin & Sons v Framularo, 159 Conn.



611, 270 A2d 543. Nevertheless, Wilson was not permitted to challenge with offers of evidence, and there is no cure.

Respectfully submitted

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Admitted June 13, 1986



Certificate of Service

I, Peter B. Reilly, do hereby certify that the foregoing Petition for Certiorari together with the Appendix thereto was duly deposited in the United States Mail, postage prepaid, addressed to:

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